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Proposed Attorneys for Debtor
Earth Class Mail Corporation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

DEBTOR'S MOTION FOR ORDER
DETERMINING ADEQUATE ASSURANCE
OF PAYMENT TO UTILITY COMPANIES

EXPEDITED HEARING REQUESTED

Earth Class Mail (the "Debtor"), as debtor in possession, hereby moves this Court for entry of an order determining that the assurance of payment proposed herein to its utility service providers is adequate so as to prohibit the utilities from altering, refusing, or discontinuing utility services to the Debtor. In support of this motion, the Debtor represents:

Background

1. On February 27, 2015 (the "Petition Date"), the Debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been requested or appointed and no official committee of creditors has been appointed.

2. The Debtor is an Oregon corporation headquartered in Beaverton, Oregon. It is the leading commercially available on-line postal mail solution for consumers and small businesses to manage inbound postal mail, including mail scanning, check depositing and parcel forwarding. The Debtor is taxed as a C corporation for federal income tax purposes.

3. The Debtor's primary objective in this Chapter 11 case is to sell its business as a going concern through a section 363 sale process as soon as is practical in the circumstances.

4. Additional background information about the Debtor is contained in the declarations filed in support of the Debtor's first day motions.

5. In connection with the operation of its business, the Debtor obtains electricity, gas, water, sewer services, waste management services, telephone services, internet services, and similar services from certain utility companies.

Jurisdiction

6. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR 2100.1. Consideration of this motion constitutes a core proceeding within the meaning of 28 USC § 157(b)(2)(A). The statutory predicates for the relief sought by this motion are sections 105 and 366 of the Bankruptcy Code. Venue is proper under 28 USC § 1408.

Relief Requested

7. By this motion, the Debtor seeks entry of an order (a) determining that utility service providers are being furnished “adequate assurance of payment” within the meaning of section 366(c)(2) of the Bankruptcy Code by its proposal to deposit with each utility company that requests, in writing, assurance of payment as a condition of providing postpetition services to the Debtor a cash deposit equal to the total amounts billed by such utility service provider to the Debtor for the last full service period immediately preceding the Petition Date, and (b) prohibiting the Debtor’s utility service providers from altering, refusing, or discontinuing services to the Debtor, in each case, without the prior approval of this Court after further notice and opportunity

1 for hearing being afforded the Debtor. The Debtor further requests (i) that the Court hold an
2 expedited hearing on this motion and find that the relief sought by this motion is necessary to avoid
3 immediate and irreparable harm to the estate, (ii) that the order on this motion be entered as soon as
4 is reasonably practical, notwithstanding the 21-day period otherwise provided in Bankruptcy Rule
5 6003(b), and (iii) that the order on this motion become effective immediately upon its entry,
6 notwithstanding the 14-day stay otherwise provided in Bankruptcy Rule 6004(h). A proposed
7 form of order is attached as **Exhibit A**.

8 **Points and Authorities**

9 8. It is essential that utility services continue to be provided to the Debtor
10 uninterrupted. If utility companies are permitted to terminate utility services, even for a brief
11 period of time, substantial harm to the Debtor's business could occur. To avert that harm, the
12 Debtor could be forced to provide whatever assurance of payment that might be demanded by its
13 utility service providers.

14 9. Under section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse, or
15 discontinue utility service to the Debtor unless, within 20 days of the Petition Date, the utility
16 receives from the Debtor adequate assurance of payment for postpetition utility services that is
17 either satisfactory to the utility or determined by this Court to be adequate.

18 10. The Debtor submits that the proposal set forth in this motion constitutes adequate
19 assurance of payment to the utilities. Attached as **Schedule 1** is a schedule that lists, for each
20 utility provider, the name of the utility, the service it provides, the total amounts billed by that
21 provider to the Debtor during the last full service period immediately preceding the Petition Date,
22 and the amount of the Debtor's proposed cash deposit. Under section 366(c)(1)(A)(i) of the
23 Bankruptcy Code, a cash deposit is one of the methods identified as an appropriate form of
24 "assurance of payment." The Debtor further submits that the entry of an order prohibiting its
25 utility service providers from altering, refusing, or discontinuing services, in each case, without the
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1 prior approval of this Court, is relief that is necessary and appropriate to carry out the provisions of
2 the Bankruptcy Code.

3 11. In determining whether an assurance of payment is adequate, a court is not required
4 to give a utility the equivalent of a guaranty of payment; it must determine only that the utility is
5 not subject to an unreasonable risk of nonpayment for postpetition services. *See, e.g., In re Caldor,*
6 *Inc. – NY*, 199 BR 1 (SDNY 1996); *In re Santa Clara Circuits West, Inc.*, 27 BR 680, 685 (Bankr
7 D Utah 1982); *In re George C. Frye Co.*, 7 BR 856 (Bankr D Me 1989).

8 12. Time is of the essence with respect to the Debtor's need for the relief requested in
9 this motion. For the reasons indicated above, the requested relief is necessary to avoid immediate
10 and irreparable harm to the estate. Accordingly, the Court should grant the requested relief on an
11 expedited basis pursuant to an order that will become effective immediately upon its entry,
12 notwithstanding the 21-day period otherwise provided in Bankruptcy Rule 6003(b) or the 14-day
13 stay otherwise provided in Bankruptcy Rule 6004(h).

14 Notice

15 13. Notice of this motion has been given to, among other parties, (i) the United States
16 trustee, (ii) the creditors holding the 20 largest unsecured claims, and (iii) each of the utility
17 companies identified on **Schedule 1**. Further notice is impractical in the circumstances. The
18 Debtor submits that the foregoing constitutes good and sufficient notice and that no other or further
19 notice need be given in the circumstances.

20 WHEREFORE, the Debtor requests entry of an order granting the relief requested herein,
21 without prejudice to the right of any utility to seek modification of the assurance of payment
22 proposed herein, and such other and further relief as is appropriate.
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1 DATED: March 2, 2015

2 MOTSCHENBACHER & BLATTNER, LLP

3 By:/s/ Nicholas J. Henderson

4 Nicholas J. Henderson, OSB No. 074027

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10 Proposed Attorneys for Debtor

11 Earth Class Mail Corporation

Schedule 1 - Schedule Of Utility Deposits

Utility Name	Service	Billings for Last Full Service Period	Proposed Cash Deposit
PGE	Electric - Beaverton	\$1,388.98	2,778.00
NW Natural	Gas	\$145.46	291.00
Waste Management	Garbage	\$140.53	281.00
Viawest	Datacenter	\$2,384.75	4,770.00
Southern California Edison	Electric - LA	\$137.84	276.00
Comcast	Internet – Beaverton	\$152.85	306.00
Frontier	Internet - BVR	\$229.99	460.00
XO	Phone	\$1,029.93	2,060.00
Time Warner	Internet - NY	\$199.00	398.00
Atlantic Metro	Internet - NY	\$289.00	578.00
Atlantic Metro	Internet - LA	\$597.00	1,194.00
AT&T	Internet - LA	\$60.00	120.00
Comcast	Internet - Seattle	\$139.08	278.00
Integra	Internet - Seattle	\$350.00	700.00
Atlantic Metro	Internet - SF	\$395.00	790.00
AT&T	Internet - SF	\$65.00	130.00
TOTAL			15,410.00

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EXHIBIT A
PROPOSED ORDER

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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In re
12 Earth Class Mail Corporation,
13 Debtor.
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Case No. 15-30982-tmb11

ORDER DETERMINING ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY
COMPANIES

15 A hearing was held on _____, to consider the Motion for Order Determining
16 Adequate Assurance of Payment to Utility Companies [ECF Dkt #___] filed by Earth Class Mail
17 Corporation (the "Debtor"), as debtor in possession. Based on the entire record of this case, it is
18 ORDERED that:

19 1. The payment of a cash deposit in an amount equal to the total amount billed by a
20 utility company for the last full service period immediately preceding February 27, 2015, to any
21 utility that requests, in writing, assurance of payment as a condition of providing postpetition
22 services to the Debtor constitutes "adequate assurance of payment" within the meaning of
23 section 366(c)(2) of the Bankruptcy Code. Except as otherwise ordered by this Court or as
24 otherwise agreed by the Debtor, the payment of the amounts listed in the attached **Schedule 1**
25 shall, in each case, satisfy the requirements of section 366 of the Bankruptcy Code.
26

1 2. All utility service providers are hereby prohibited from altering, refusing, or
2 discontinuing utility services to the Debtor without further Court order after notice and
3 opportunity for hearing being afforded to the Debtor.

4 3. This Order is without prejudice to the right of any utility service provider to seek
5 additional or alternative assurance of payment upon further request of this Court.

6 4. The Debtor is authorized to take all actions necessary to effectuate the relief
7 granted by this Order.

8 5. The requirements of Bankruptcy Rule 6003(b) are satisfied to the extent they
9 apply to the relief granted by this Order.

10 6. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective
11 immediately upon its entry.

12 7. This Court retains jurisdiction with respect to all matters arising from or related to
13 the implementation of this Order.

14 # # #

15 I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

16
17 **Presented by:**

18 MOTSCHENBACHER & BLATTNER, LLP

19 By: EXHIBIT

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26 Proposed Attorneys for Earth Class Mail
Corporation

cc: List of Interested Parties

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